

FISH AND WILDLIFE COMMISSION AGENDA ITEM COVER SHEET

Meeting Date: February 11, 2016

Agenda Item: Deep Creek Instream Flow Water Right Leases

Division: Fisheries

Action Needed: Endorsement

Time Needed on Agenda for this Presentation: 5 Min

Background

Deep Creek is an important spawning tributary for the Missouri River in addition to providing a quality resident fishery. During the summer and into the early fall dewatering due to irrigation withdrawals reduces stream flow in Deep Creek, which in turn negatively affects the fishery. In 2013 flow in Deep Creek substantially improved due to a change in source of supply from Deep Creek to the Broadwater-Missouri Canal of a major irrigation project. In 2015 an additional project was completed to change the supply from Deep Creek to the Broadwater-Missouri Canal. However, it may not be possible to sustain these flow improvements without legally changing existing irrigation rights to instream flow. FWP has entered into a water right lease agreement with the City of Townsend, but this lease alone which is expected to provide about ½ cfs will not be sufficient to meet the 3-5 cfs objective for Deep Creek. Several water users have expressed interest in leasing their water to FWP. FWP has statutory authority to temporarily change leased water rights to instream flow.

Public Involvement Process & Results

FWP staff has met with the Broadwater-Missouri Water Users' Association Board and discussed the potential for FWP to lease additional water rights and replace the water leased with water from their canal. FWP staff has also kept the Broadwater Conservation District informed of the potential for additional water right leases. The water right lease agreements would be subject to final Commission approval at which time the public would have an opportunity to comment. In order to change a portion of the water right to instream flow, FWP must make application to DNRC. This application would be noticed to the public, and potentially affected parties would have the opportunity to object to the changes to instream flow. In addition, DNRC would conduct an environmental review of the proposed changes.

Alternatives and Analysis

One alternative would be for FWP not to lease additional water rights and change them to instream flow. Improvements to flow-related habitat in Deep Creek may be largely foregone as the present lease with the City of Townsend is not adequate to fully protect the desired instream flow. Another alternative would be for the water users to temporarily change their water right to instream flow without the involvement of FWP. This alternative would require the water users to incur the legal and technical cost of pursuing the change to instream flow, for which they have no financial incentive. It is unlikely the water users would pursue changes to instream flow for the benefit of the public fishery without FWP.

Agency Recommendation & Rationale

FWP recommends that the Commission direct FWP Staff to negotiate water-right lease agreements with willing water users on Deep Creek to legally protect desired instream flow levels.

Proposed Motion

I move that FWP staff negotiate additional water-right lease agreements for irrigation water rights from Deep Creek sufficient to protect desired instream flow levels, subject to final approval by the Commission.